

12th day of February, 2002

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-65/51542

PRELIMINARY RECITALS

Pursuant to a petition filed December 10, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Washburn County Dept. of Social Services in regard to medical assistance, a hearing was held on January 22, 2002, at Shell Lake, Wisconsin.

The issue for determination is whether the petitioner is entitled to an increase in the asset limit allowed under spousal impoverishment provisions of the medical assistance program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Janice Kling, ESS
Washburn County Dept Of Social Services
110 W 4th Avenue
PO Box 250
Shell Lake, WI 54871

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Washburn County.
2. The petitioner lives in a nursing home. His spouse lives in the community.
3. The petitioner receives \$783 a month in social security and his spouse receives \$406 from the program.
4. The petitioner and his spouse have \$79,134.38 in assets. Those assets produce \$348.90 income each month.
5. The petitioner applied for institutional medical assistance on December 3, 2001. His application was denied because he is over the asset limit for the program.

DISCUSSION

The petitioner seeks medical assistance under the spousal impoverishment provisions of the medical assistance program. These provisions are meant to provide medical assistance to those institutionalized while allowing the spouse who remains in the community avoid poverty. Couples whose assets are between \$50,000 and \$100,000 may assign \$50,000 to the community spouse. §49.455(6)(b)3, Stats. *MA Handbook*, Appendix §23.4.2. In addition, the institutionalized spouse may keep the regular medical assistance asset limit of \$2,000, which has the effect of increasing the total assets a couple may retain to \$52,000. §49.47(4)(b)3g, Stats. Nevertheless, if the community spouse's income falls short of his needs, she may request through a fair hearing that the asset limit be increased so that more income can be produced. The administrative law judge must assign sufficient assets to generate "enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance..." §49.455(8)(d), Stats. The minimum monthly maintenance needs allowance currently is the lesser of \$2,175 or \$1,935 plus excess shelter costs. *MA Handbook*, Appendix §23.6.0. Excess shelter costs are shelter costs above \$562.50. *Id.*

The petitioner and his wife receive a total of \$1,189 in social security each month. They have \$79,134.38 in assets. These assets produce another \$348.90 each month. Because this additional income still leaves the petitioner's wife with less than \$1,935 per month, she requires that all of the assets be assigned to her to produce adequate income. The petitioner's wife should note that all of the assets must be actually and legally transferred into her name only by petitioner's next regularly scheduled review date. *MA Handbook*, App. §23.4.3.

CONCLUSIONS OF LAW

1. The petitioner's wife requires assets in excess of the established asset allowance in order to generate monthly income at the minimum monthly maintenance needs allowance.
2. All of the assets may be allocated to the petitioner's wife in the medical assistance eligibility determination.
3. The petitioner is not over the asset limit for institutional medical assistance eligibility.

NOW, THEREFORE, it is

ORDERED

That this matter be remanded to the county agency with instructions that within 10 days of the date of this order the county find the petitioner eligible for institutional medical assistance. His eligibility shall be retroactive to the date that he entered the nursing home provided that this date is not before September 1, 2001.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau
Claire, Wisconsin, this _____ day of
_____, 2002.

Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
315/MDO